

# Book Review

By Hugh Selby

## Interpreters and the Legal System

by

Kathy Laster  
& Veronica Taylor

***Interpreters and the Legal System*, by Kathy Laster and Veronica Taylor, Federation Press, Sydney 1994; paperback 232 pages plus appendices, extensive bibliography, and index. Price \$35.00.**

If anyone still thought that 'multicultural' was a label without substance in Australia this book would change their mind. The number and scope of reports, legislative changes, private sector initiatives, training courses which reflect recognition of the 'babel' characteristics of 1990's Australian society is considerable. Just as striking is the 'ad hoc', reactive, narrowly focused nature of much of this activity. It is as though the various proponents of initiatives to respond to the language and cultural diversity of this nation are, ironically, the workers at a policy tower of babel. They are not listening to each other, perhaps because they don't know that someone is speaking to them from another perspective about common problems.

Laster and Taylor have set out to encourage discussion, debate and change in how our legal system responds to problems of language. They have been successful. Here is a comprehensive study of how the use of interpreters has developed in our legal system, how their actual roles extend well beyond the typical conceptions held by native english speakers, what are the necessary changes if, as a multicultural, multilingual society, we truly wish to offer fairness and equality within our legal system to all.

Chris Morgan's cover design is a clever ideograph of law and the non english speaking background person - NESB - meeting successfully through the intervention of an interpreter. The three caricatures recall ancient frescos and hieroglyphics, and noting how imperfectly we understand those ancient societies, save that they perished, let us make a much better job of understanding our own. Fortunately the book behind Morgan's cover is like a hologram or Magic 3D picture; we get to see the whole picture, not just an interesting two dimensional representation which lacks depth of field.

Language issues cannot be separated from the law's own claims about its proper sphere. The legal system's claims to fairness, equality, and efficiency cannot be sustained without attending to the language needs of NESB people. Their lack of understanding and the barriers that arise from language must be dealt with. Linguistic research on communication indicates that there are two major thresholds in the development of language proficiency; 1 'basic interpersonal communication skills' 2 'cognitive language proficiency'. The latter is essential for participation in legal proceedings. People who have migrated to Australia as adults rarely attain this second threshold competency despite long residence here.

Competent interpreters are a necessary, but not sufficient response to the challenge. Most day to day legal work takes place away from courts and tribunals. Hence to focus on courtroom interpreting is to get the priorities wrong. Our priority is to meet the needs of members of multilingual community as they seek to use and understand any part of our legal system.

The authors argue that the interpreter's role should be understood as a communication facilitator. Interpreters do not simply translate 'words'; they do translate concepts and ideas from one cultural context into another. Thus, necessarily they do not interpret 'literally', but continually make discretionary choices about which is the best, or closest equivalent. We should never delude ourselves that what is being performed is, or ever could be, 'literal' interpreting. Only ignorance can countenance the assumption that interpreters can operate like on/off machines. Thinking of an interpreter as a conduit 'machine' is like claiming that Shakespearean lines would be rendered identically by Meryl Streep or Richard Burton.

Many, perhaps most, lawyers still lack an appreciation of how demanding the job of legal interpreting can be. The NESB client may be illiterate in their own language, have little if any grasp of a legal system, have difficulty in explaining their problem and appreciating the range of

possible outcomes. Interpreters do much more than interpret from one language to another. So often they act as a cultural and social bridge, compensating not only for the NESB person's lack of english but also for that person's educational and social background and lack of understanding about the legal system within which they are now entwined.

Legal interpreters need to know what are the roles of all the players in the legal arena. They must be acutely sensitive to how language and the way of expression is manipulated in our adversarial system. They must have a specialist vocabulary and a commitment to the ethical underpinnings of the legal system. That is a large demand.

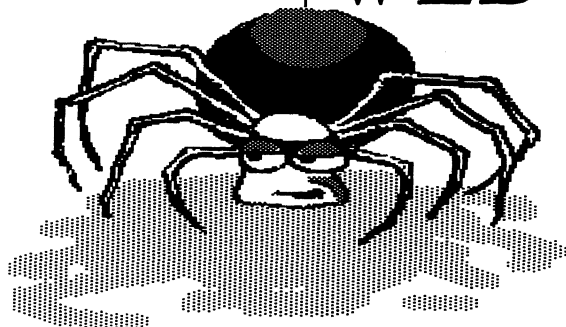
For the moment the reality is that interpreter work in legal settings is hard, the pay is low, there is little or no formal training available, and working relationships with legal professionals are often difficult. For so long as the legal system regards interpreters as machines for hire by the hour it is hardly surprising that interpreters may fairly adopt a 'taxi meter' approach - they work only so long as the flag is down. To create an incentive for proper preparation for legal assignments, and such preparation is just as necessary for the interpreter as it is for the lawyers, the parties and the witnesses, interpreters must be properly rewarded for their skills and their time.

Since comprehension and expression of language are so fundamental to both participation in our legal system and the outcomes from that participation should there be a 'right' to an interpreter? If there is, when does it come into play? Who should pay for it? What are the consequences of not providing an adequate interpreter service? There has been international attention to this question. The International Covenant on Civil and Political Rights provides, for criminal trials, that an accused 'have the free assistance of an interpreter if he cannot understand or speak the language used in court'. Similarly the Indigenous and Tribal People's Convention provides, 'measures shall be taken to ensure that... these people can understand and be understood in legal proceedings... through the provision interpretation'. This provision is echoed in the recommendations made by the inquiry into black deaths in custody.

The requirement that an interpreter be provided in criminal investigations and trials is much better accepted than for civil matters. And the expectation that a party will be assisted by an interpreter does not extend to providing witnesses with interpreters.

*Continued Page 13*

# THE SPIDER'S WEB



## County Court of Victoria

*Mr Rapke:* The second thing is, could I have Your Honour's leave to, during the trial, place a computer on the Bar table; it's a laptop computer?

*His Honour:* I don't think it will trouble me. Does it trouble anybody else?

*Counsel:* No.

*His Honour:* It will be quiet? It won't make noises and things like that?

*Mr Rapke:* No, it's not a barrister.  
(*Victorian Bar News*  
Vol 90, Spring 1994)

## A message of dread

The Queensland Law Society and Public Trustee have recently combined a Wills campaign with the hard hitting PREPARE TO DIE message.

As well as winning some media awards, the message plastered over the rear of the taxis has apparently frightened witless quite a few Japanese tourists.

*Around the Traps*  
*The Law Society of SA*  
Vol 16 No 11 December 1994

## The Criminal Lawyers Conference 1995 Bali



Cartoon from *Law Talk*  
Law Society of New Zealand

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From Page 12

But before we put too much emphasis on the need of NESB people to have an interpreter in a court or tribunal it should be noted that the provision of good interpreters at an earlier stage, for example, when the NESB client is first dealing with a government agency, might well forestall many of the matters that end up in tribunals or courts. The right to have an interpreter during police questioning is probably more significant - prevention of injustice being better than cure - than having an interpreter in court.

Recognising that interpreters are communication facilitators explicitly gives rise to recognition that interpreters make discretionary decisions and they must be openly accountable for the variety of roles that they play. That is, we must do away with a model which either forces interpreters into covert activity or pretends that interpreters are mere conduits.

No one can claim that there are sufficient competent legal interpreters around Australia. A serious attempt to improve the quality of legal interpreting must begin - aiming to create a much bigger pool of candidates who have high-quality, basic interpreter education and the option of undertaking specialised training in legal interpreting. Those of us who rely upon interpreters to meet the legal needs of NESB people, as legal practitioners or decision makers, must also be better informed about the nature, the demands and limitations of interpreting.

This book reflects a serious, balanced and insightful attempt to raise and discuss issues in legal interpreting by drawing upon a very wide range of earlier studies and reports not only in Australia, but also Canada, New Zealand and the United States. As a result it is an excellent basis for public discussion and education about the need for interpreters in our legal system and the costs, short and long term, or ignoring the challenge. So that you can contribute to this discussion read the book.

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